

LEGAL ISSUES FOR CHARTER SCHOOLS



Lesley D. Farmer, Esq.
TN Department of Education

WHAT WE WILL COVER TODAY

- Charter School Law in Tennessee
- Student Records & Confidentiality
- TN Open Meetings Act
- TN Open Records Act
- Civil Rights Laws in Public Schools
- Religious Expression in Public Schools

Charter Schools in TN

- Charter schools are public schools.
- Tenn. Code Ann. 49-13-104 defines “public charter school” as a public school in the state of Tennessee that is established and operating under the terms of a charter agreement and in accordance with this chapter.

STUDENT RECORDS & CONFIDENTIALITY



Family Educational Rights and Privacy Act (FERPA)

Also known as the Buckley
Amendment

Statute: 20 U.S.C. 1232(g)

Regulations: 34 CFR Part 99

Primary Rights of Parents under FERPA

- Right to inspect and review education records
- Right to seek to amend education records
- Right to have some control over the disclosure of information from education records

(These rights transfer to student when student turns 18 or attends a postsecondary institution.)

99.1 To which educational agencies and institutions do these regulations apply?

- FERPA applies to agencies that receive federal funds under any program administered by the Secretary of Education.
- Most private and parochial schools at the elementary and secondary levels do not receive such funds and are, therefore, not subject to FERPA.

99.3 Definitions

- “Education records” are records which –
 - (1) contain information which is directly related to a student; and
 - (2) are maintained by an educational agency or institution or by a party acting for the agency or institution.
- records on a student receiving services under Part B of the Individuals with Disabilities Education Act are “education records” subject to FERPA.
- medical or health records are “education records” subject to FERPA

“Education records,” cont.

- Exceptions to “education records” include
 - (1) Records kept in the sole possession of the maker of the record and not revealed to anyone but a temporary substitute, e.g., personal notes
 - (2) Records created and maintained by a law enforcement unit for a law enforcement purpose

Definitions, cont.

- “Parent” means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian.

Definitions, cont.

- “Personally identifiable information” includes, but is not limited to:
 - The student’s name.
 - Name of the student’s parent or other family members.
 - Address of the student or student’s family.
 - A personal identifier, such as a social security number or student number.
 - A list of personal characteristics or other information that would make the student’s identity easily traceable.

Definitions, cont.

- “Directory information” is –
 - Information not generally considered harmful or an invasion of privacy if disclosed.
 - Includes, but is not limited to:
 - name, address, telephone listing, electronic mail address
 - date and place of birth, photographs
 - participation in officially recognized activities and sports
 - field of study
 - weight and height of athletes
 - enrollment status (full-, part-time, undergraduate, graduate)
 - degrees & awards received
 - dates of attendance
 - most recent previous school attended
 - grade level
- Directory information cannot include student identification numbers or social security numbers.

Definitions, cont.

- “Record” means any information maintained in any way, including, but not limited to:
 - Handwriting
 - Video or audio tape
 - Computer media
 - Film
 - Print
 - Microfilm and microfiche

Rights of Parents

99.4 What are the rights of parents, custodial or noncustodial?

- FERPA affords full rights to either parent, unless the school has been provided with evidence that there is a court order, State statute or legally binding document that specifically revokes these rights.

Subpart B – Inspection and Review of Education Records

99.10 *What rights exist for a parent or eligible student to inspect and review education records?*

- School must comply with request within 45 days.
- Generally required to give copies only if failure to do so would effectively deny access – example would be a student or former student who does not live within commuting distance.
- School may *not* destroy records if request for access is pending.

Inspection and Review, cont.

99.11 *May an educational agency or institution charge a fee for copies of education records?*

- Yes – unless imposing a fee effectively prevents a parent from exercising his or her right to inspect and review education records.

99.12 *What limitations exist on the right to inspect and review education records?*

- If the records contain information on more than one student, the requesting parent may inspect, review, or be informed of only the specific information about his or her child's records.

Subpart C – What are the Procedures for Amending Education Records

99.20, 99.21, 99.22

- Parent should identify portion of record believed to contain inaccurate or misleading information.
- School must decide within reasonable period of time whether to amend as requested.
- If school decides not to amend, must inform parent of right to a hearing.
- After hearing, if decision is still not to amend, parent has a right to insert a statement in the record.

99.37 *What conditions apply to disclosing directory information?*

- A school may disclose directory information if it has given public notice to parents of students in attendance of:
 - What items the school has designated as directory information.
 - A parent's right to refuse to let the school designate any or all of the information as directory information.
 - The time within which a parent must notify the school in writing that he or she does not want any or all of the information designated as directory information.

What are the Enforcement Provisions?

99.60-99.67

- The Family Policy Compliance Office is authorized by the Secretary of Education to investigate, process, and review complaints and violations under FERPA.
- Parents and eligible students may file complaints with the U.S. Department of Education.
- Timely complaint = 180 days

No Child Left Behind Act

FERPA -- not amended but two provisions of NCLB relate to disclosures of education records

Disciplinary Records

- States that receive funds under the ESEA are required by January 2004 to provide an assurance to the Secretary that the State:
 - “has a procedure in place to facilitate the transfer of disciplinary records, with respect to a suspension or expulsion, by local educational agencies to any private or public elementary school or secondary school for any student who is enrolled or seeks, intends, or is instructed to enroll, on a full- or part-time basis, in the school.”

Military Recruiters

- ESEA, as amended by NCLB, and 2002 Defense Reauthorization Act require LEAs to:
 - give military recruiters the same access to secondary school students as provided to postsecondary institutions or to prospective employers;
 - provide students' names, addresses, and telephone listings to military recruiters, when requested, unless a parent has opted out of providing such information; and

Military Recruiters, cont.

- notify parents that it routinely discloses information to military recruiters and how parents may opt out of this
 - this notification may be included with the “directory information” notice under FERPA
 - if a school does not provide sufficient notice relating to "directory information" it must do a special notice to parents about the disclosure to military recruiters.

Technical Assistance

For technical assistance and advice to school officials:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-4605

(202) 260-3887 Telephone

(202) 260-9001 Fax



Informal Technical Assistance



For informal requests for technical assistance, email at:

FERPA@ed.gov

Visit web site:



<http://www.ed.gov/policy/gen/guid/fpco/index.html>

Tennessee Law Regarding Student Records

- Tenn. Code Ann. 49-6-901 - A copy of a student's report card shall be furnished by the LEA to the parent or parents of such student.
- Tenn. Code Ann. 49-6-902 – rights of noncustodial parent to have copy of records

Tennessee Law Regarding Student Records

- Tenn. Code Ann. 10-7-504 - Confidential Records
(4) (A) student records shall be treated as confidential. Information in such records relating to academic performance, financial status of a student or the student's parent or guardian, medical or psychological treatment or testing shall not be made available to unauthorized personnel or to the public or any agency without the consent of the student involved or the parent or guardian of a minor student.

Tennessee Law, cont.

- Tenn. Code Ann. 10-7-504 - Confidential Records
- “Statistical information not identified with a particular student may be released to any person, agency, or the public; and information relating only to an individual student's name, age, address, dates of attendance, grade levels completed, class placement and academic degrees awarded may likewise be disclosed.”

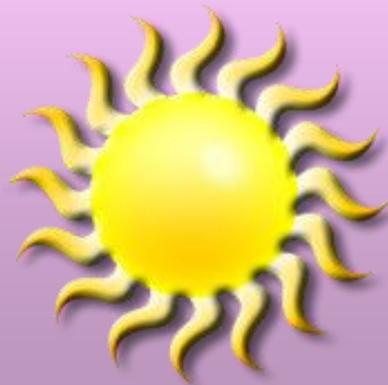
TENNESSEE OPEN MEETINGS ACT



OR THE SUNSHINE LAW

Tenn. Code Ann. 8-44-101(a)

The General Assembly hereby declares it to be the policy of this state that the formation of public policy and decisions is public business and shall not be conducted in secret.



OPEN MEETINGS

Tenn. Code Ann. 8-44-102(a)

All meetings of any governing body are declared to be public meetings open to the public at all times, except as provided by the Constitution of Tennessee.

MEETING

The convening of a governing body in order to make a decision or to deliberate toward a decision on any matter.

GOVERNING BODY

The members of a public body which consists of 2 or more members with the authority to make decisions for or recommendations to a public body on policy or administration.

* (includes negotiation committees)

NOTICE OF PUBLIC MEETINGS

Tenn. Code Ann. 8-44-103(a)

Any such governmental body which holds a meeting shall give adequate public notice.



ADEQUATE PUBLIC NOTICE

Adequate public notice under the circumstances, or such notice based on the totality of the circumstances as would fairly inform the public.

Memphis Pub. Co. v. City of Memphis
(1974)

MINUTES/VOTES

Tenn. Code Ann. 8-44-104

- promptly and fully recorded
- open to inspection
- all votes public
- record of individual vote if roll call

ACTIONS NULLIFIED- ENFORCEMENT

Tenn. Code Ann. 8-44-104 ..105

- prohibited actions void
- court to make findings of fact and conclusions of law
- permanent injunction
- court retains jurisdiction
- semi-annual reports

EXCEPTIONS

- chance meetings
- on site inspections
- attorney / client discussions
- negotiation committee strategy sessions

AVOID EVEN THE
APPEARANCE OF
IMPROPRIETY!

TENNESSEE OPEN RECORDS ACT



OPEN RECORDS

- Tenn. Code Ann. 10-7-503
 - All state, county, and municipal records shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee.....

Exceptions

Tenn. Code Ann. 10-7-504(f)(1)

- unpublished numbers
- bank account information
- SSN
- driver license information*
- medical information
- Teacher effect data (TCA 49-1-606)

CONFLICT OF INTEREST

- Tenn. Code Ann. 12-4-101-102
 - direct conflicts - prohibited
 - indirect conflicts- publicly acknowledged
 - Penalty – forfeit all pay & compensation, dismissal & ineligibility for 10 yrs
- Tenn. Code Ann. 49-6-2003
 - no direct or indirect interest in supplying books, maps, furniture, apparatus to public schools.

CIVIL RIGHTS LAWS



Title VI of the Civil Rights Act of 1964

- No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- Does not apply only to minorities.
- Covers all discrimination based on a persons race, color, or national origin, whatever it may be.

Title VI, cont.

- Intentional discrimination based on race, color or national origin is obviously a violation of Title VI; **BUT**
- The existence of a hostile environment based on race, color or national origin created, encouraged, accepted, tolerated or left uncorrected by an LEA is also a violation of Title VI.

Title IX of the Education Amendments of 1972

- No person in the United States shall, on the basis of **sex**, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.
- Covers sexual harassment, pregnancy discrimination, athletics, and any discrimination with a basis in the differences between the genders.

Title IX, cont.

- Sexual harassment is prohibited regardless of the sex of the harasser or the victim, i.e., sexual harassment may occur if the harasser and the victim are the same sex.
- For Title IX to apply, the discrimination must be based on sex, even where the harasser and victim are the same sex.

Title IX, cont.

- Title IX does not prohibit discrimination on the basis of sexual orientation
- Gay and lesbian students are protected from sexual harassment (i.e. harassment based on sex) the same as other students.

IDEIA FORMERLY IDEA

- All Students Can Learn & Have Right to Attend School
- Free Appropriate Public Education (FAPE)
- Least Restrictive Environment (LRE)
- Individualized Education Plan (IEP)
- Parents Have Right to Participate in Decision Making

Section 504 of the Rehabilitation Act of 1973

- No otherwise qualified individual with a disability...shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
- It is civil rights legislation for persons with disabilities, designed to prevent any form of discrimination based on disabilities.

Eligibility for Protections & Services Under Section 504

- Eligibility is very broad & covers many different types of disabilities and disabling conditions, many of which are not covered under IDEA.
- Eligibility is based on the definition of disability, as defined in Section 504.
- Eligibility is not based on clinical categories, such as mental retardation or learning disabilities.

Eligibility for Protections & Services Under Section 504

- Eligibility for protections under Section 504 is not related to eligibility under other federal or state laws, such as IDEA.
- As with IDEA, schools are required to locate students in its districts who may be eligible for protections under Section 504.

Definition of Disability

- Physical or mental impairment that substantially limits one or more major life activities; or
- Have a record of such impairment; or
- Be regarded as having such an impairment

Physical Impairment

Any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body system: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

Mental Impairment

Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities

Major life activities

- Non-exhaustive list includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
- New ADAAA (2009)
 - general activities, including eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating.
 - major bodily functions, including functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions

Determining Substantial Limitations

- Must be made on a case-by-case basis with respect to the individual student
- Section 504 requires that a group of knowledgeable persons draw upon information from a variety of sources to make this determination

Mitigating Measures under Section 504

- Cannot consider “mitigating measures” in determining whether a student has a physical or mental impairment that substantially limits that student in a major life activity
- Examples – medication, medical supplies, equipment or appliances, low-vision devices (do not include ordinary eyeglasses or contact lenses), prosthetics (including limbs and devices), hearing aids and cochlear implants or other implantable devices, mobility devices, oxygen therapy equipment and supplies, use of assistive technology, reasonable accommodations or auxiliary aids or services, and learned behavioral or adaptive neurological modifications

Mitigating Measures Exception

- Ordinary eyeglasses or contact lenses can be considered in determining if an impairment substantially limits a major life activity.
- Defined as lenses that are intended to fully correct visual acuity or eliminate refractive error, whereas “low-vision devices” are devices that magnify, enhance, or otherwise augment a visual image.

Temporary Disabilities

- Usually does not constitute a disability, unless its severity is such that it results in a substantial limitation of one or more major life activities for an extended period of time.
- Must be determined on a case-by-case basis
- ADAAA provides an individual is not “regarded as” an individual with disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

Physical Accessibility

- All buildings in a school district do not have to be accessible. Rather, all PROGRAMS offered by the district have to be accessible.
- Buildings that are renovated, new, or that will be built in the future must be accessible for children with different types of disabilities

RELIGIOUS EXPRESSION IN PUBLIC SCHOOLS

The truth vs. the myths!

RELIGIOUS EXPRESSION IN PUBLIC SCHOOLS

- Misunderstanding of how the Free Exercise and Establishment Clauses in the First Amendment to the U.S. Constitution apply to public schools
- Mistaken beliefs that any type of religious expression in school is unconstitutional
- Mistaken beliefs have caused unintentional violations of First Amendment rights of students & employees
- Understanding a few basic points and dispelling myths regarding religious liberty is a way for school boards, school system employees and communities to avoid negative feelings, conflict and legal pitfalls.

RELIGIOUS EXPRESSION IN PUBLIC SCHOOLS

- The Establishment Clause prohibits the government from "establishing a religion." It does not apply to private citizens. While the Constitution limits the power of the government to take actions that advance or promote religion, it also limits the government's power to inhibit religion in any way.
- Schools must be absolutely neutral with regard to religion.

RELIGIOUS EXPRESSION IN PUBLIC SCHOOLS

- The Supreme Court in the case, *Lemon v. Kurtzman*, adopted a three-part test for interpreting the Establishment Clause.
- School systems must always keep this three-part test in mind when taking actions or developing policies that may involve religious expression.
- The Lemon Test:
 - 1. Does the law, or other government action, have a bona fide secular or civic purpose?
 - 2. Does the primary effect neither advance nor inhibit religion? In other words, is it neutral?
 - 3. Does the law avoid excessive governmental entanglement with religion?

RELIGIOUS EXPRESSION IN PUBLIC SCHOOLS

- Tennessee Student Religious Liberty Act of 1997
- The stated purpose of the legislation
 - fight confusion and myths
 - protect rights and schools
 - reduce litigation costs

TOP 4 MYTHS ABOUT RELIGION IN SCHOOLS

- **MYTH #1: STUDENTS MAY NOT PRAY IN SCHOOL.** School system employees may not direct or encourage any religious or anti-religious activity, but no law prohibits students from voluntarily praying in school. The Establishment Clause only prohibits school sponsored prayer. Voluntary prayers of course may not infringe on the rights of the school to maintain discipline, prevent disruptions or determine educational curriculum and assignments.
- *Santa Fe Independent School District v. Jane Doe*, - prayer at sporting events



MYTH #2: STUDENTS MAY NOT READ THE BIBLE OR OTHER RELIGIOUS BOOKS IN SCHOOL.

- Not allowing students to read religious material in class during free time would clearly be a violation of the First Amendment. As stated above, schools may not act to inhibit religion or promote religion. Pursuant to the Tennessee Student Religious Liberty Act of 1997, students may "possess or distribute religious literature in a public school, subject to reasonable time place and manner restrictions to the same extent and under the same circumstances as a student is permitted to possess or distribute literature on non-religious topics or subjects in such school."



MYTH #3: STUDENTS MAY NOT SHARE THEIR FAITH WITH OTHERS.

- Students may speak to, and attempt to persuade, their peers about religious topics just as they do regarding political topics.
- BUT... School officials should not allow student speech that constitutes harassment aimed at a student or a group of students.
- A federal law, the *Equal Access Act*, prohibits secondary schools that accept federal aid and allow extracurricular clubs to meet during non-instructional times from denying other clubs to meet as a result of their political, philosophical or religious orientation. The Act states, however, that the clubs must be student initiated and student led.
- The only way a school system may disallow religious clubs to meet at school is by choosing to be a closed forum and not allowing any extracurricular groups to meet, in which case the provisions of the Act would not apply.

MYTH #4: TEACHERS MAY NEVER DISCUSS RELIGION IN THEIR CLASSES.

- The Supreme Court wrote in *Abington v. Schempp*, that without the study of comparative religion or the history of religion and its relationship to the advancement of civilization, a student's education is not complete. The study of religion or religious writings, when presented objectively as part of a secular program of education, is consistent with the First Amendment.
- The important thing for educators to remember is that schools may teach "about religion" but must avoid religious indoctrination.
- For more information on this important topic, please see <http://www.freedomforum.org> to obtain copies of the various First Amendment Center publications regarding this issue.

THANK YOU!